

(b) Notwithstanding a finding of incompetence, a ward who is petitioning the court under sub. (2) may retain an attorney, the selection of whom is subject to court approval, and contract for the payment of fees, regardless of whether or not the guardian consents or whether or not the court finds cause under sub. (2).

54.70 Duties in of guardian ad litem for reviews. In any review of a protective placement under s. 55.06 or of a protective ~~service~~ services order under s. 55.05, the guardian ad litem shall do all of the following:

- (1) Interview the ward to explain the review procedure, the right to an independent evaluation, the right to counsel, and the right to a hearing.
- (2) Provide the information under ~~par. (a)~~ sub. (1) to the ward in writing.
- (3) ~~Secure~~ Request that the court order an additional medical, psychological, or other evaluation of the ward, if necessary.
- (4) Review the annual report and relevant reports on the ward's condition and placement.
- (5) Review the ward's condition, placement, and rights with the guardian.
- (6) If relevant, report to the court that the ward objects to the finding of continuing incompetency, the present or proposed placement, the position of the guardian, or the recommendation of the guardian ad litem as to the best interests of the ward or if there is ambiguity about the ward's position on these matters.
- (7) Provide a summary written report to the court.
- (8) If relevant, report to the court that the ward requests the appointment of counsel or an adversary hearing.
- (9) Attend the hearing.

****NOTE: You asked why s. 54.70 (6m) (now renumbered s. 54.70 (7)) and (9m) (now renumbered s. 54.70 (9)) had had odd numbering. I've been unable to figure out why, but it doesn't seem to have been the result of an underlying problem.

✓

This shouldn't be in Ch. 54 - is only relevant for Ch. 55

D-NOTE

✓



54.72 Guardian compensation and reimbursement. A guardian of the person or a guardian of the estate is entitled to compensation and to reimbursement for expenses as follows:

(1) COMPENSATION. (a) Subject to the court's approval, as determined under par. (b), a guardian shall receive reasonable compensation for the guardian's services.

(b) The court shall use all of the following factors in deciding whether compensation for a guardian is just and reasonable:

1. The reasonableness of the services rendered.
2. The fair market value of the service rendered.
3. Any conflict of interest of the guardian.
4. The availability of another to provide the services.
5. The value and nature of the ward's estate, *including the sources of the ward's income*
6. *whether the ward's basic needs are being met*
7. The hourly or other rate proposed by the guardian for the services.

(c) The amount of the compensation may be determined on an hourly basis, as a monthly stipend, or on any other basis that the court determines is reasonable under the circumstances. The court may establish the amount or basis for computing the guardian's compensation at the time of the guardian's initial appointment.

(2) REIMBURSEMENT OF EXPENSES. The guardian shall be reimbursed for the amount of the guardian's reasonable expenses incurred in the execution of the guardian's duties, including necessary compensation paid to an attorney, an accountant, a broker, and other agents or service providers.

(3) WHEN COURT APPROVAL REQUIRED. A court must approve compensation and reimbursement of expenses before payment to the guardian is made, but court approval need not be obtained before charges are incurred.

✓

54.74 Compensation of guardian ad litem. ~~On order of the court, the guardian ad litem appointed under this chapter shall be allowed reasonable compensation to be paid by the county of venue, unless Unless the court otherwise directs or unless the guardian ad litem is appointed for a minor, in which case the compensation of the guardian ad litem shall be paid by the minor's parents or the county of venue as provided in s. 48.235 (8), the court shall order reasonable compensation to be paid to a guardian ad litem appointed under s. 54.40 (1) from the ward's estate, if sufficient, or, if insufficient, by the county of venue.~~ If the court orders a county to pay the compensation of the guardian ad litem, the amount ordered may not exceed the compensation paid to a private attorneys attorney under s. 977.08 (4m) (b). The guardian ad litem shall receive compensation for performing all duties required under s. 54.40 (4) and for any other acts that are approved by the court and are reasonably necessary to promote the ward's best interests.

SUBCHAPTER VI

VOLUNTARY PROCEEDINGS;

CONSERVATORS

54.76 Conservator; appointment; duties and powers; termination. (1)

Any adult resident who is unwilling or believes that he or she is unable properly to manage his or her property or income may voluntarily apply to the circuit court of the county of his or her residence for appointment of a conservator of the estate. Upon receipt of the application, the court shall fix a time and place for hearing the application and may direct to whom, including presumptive adult heirs, and in what manner notice of the hearing shall be given. ~~(7) If an application for conservatorship is filed, the~~ to a potential recipient of the notice, unless the potential recipient has

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DAK
8/24

Need
Procedure
Stand-Alone
Successor
Conservatorship

waved receipt. The fee prescribed in s. 814.66 (1) (b) shall be paid at the time of the filing of the inventory or other documents setting forth the value of the estate.

****NOTE: Should anyone in addition to presumptive heirs be specified in s. 54.76 (1)? (See distribution of notice under s. 54.76 (4).) Should any of this be in s. 54.38? Note that I did not draft "adult" — shouldn't all heirs receive notice (see, for example, s. 54.76 (4))? No, just adults

(2) ~~At the time of such hearing for appointment of a conservator,~~ the applicant shall be personally examined by the court and if the court is satisfied that the applicant desires a conservator and that the fiduciary nominated is suitable, the court may appoint the nominee as conservator and issue letters of conservatorship to the nominee upon the filing of a bond in the amount fixed by the court.

(3) A conservator ~~shall have~~ has all the powers and duties of a guardian of the property of an incompetent person. ~~The conservator's powers shall cease upon being removed by the court or upon death of the person whose estate is being conserved estate. An individual whose estate is under conservatorship may make gifts of his or her estate, subject to approval of the conservator.~~

****NOTE: Please review the gifting language carefully, in light of the actual factual situation and holding of *Zobel v. Fenendall*. fine

(4) Any person, including an individual whose estate is under conservatorship, may apply to the court at any time for termination ~~thereof~~ of the conservatorship. Upon such receipt of the application, the court shall fix a time and place for hearing and may direct that 10 days' notice by mail be given to the ~~person's~~ individual's guardian of the person or agent under a power of attorney for healthcare, if any, the conservator, and the presumptive ^{adult} heirs of the applicant. Upon such individual whose estate is under conservatorship. A potential recipient of the notice may waive its receipt. At the hearing, the court shall, unless it is clearly shown that the applicant individual whose estate is under conservatorship is incompetent, remove the

✓
See
my
change
a/24
conservator and order the property restored to the applicant, or if the applicant so desires and the nominee is suitable, the court may appoint a successor conservator. ~~provided, however, that~~ (5) individual If the court shall upon such hearing determine determines at the hearing that the person individual whose estate is administered by a conservator may be is incapable of handling his or her estate, the court shall order the conservatorship continued, or, if the applicant so desires and the a nominee is suitable, the court may appoint a successor conservator. A conservatorship may only be terminated under a hearing under this subsection. X

(5) Appointment of a conservator ~~shall not be~~ does not constitute evidence of the competency or incompetency of the person whose estate is being administered.

(6) The court that appointed the conservator shall have continuing jurisdiction over the conservator. Any of the following, if committed by a conservator with respect to a conservatee or the conservatee's estate, constitutes cause for a remedy of the conservator under sub. (7) (a) 5.:

(a) Failing to timely file an inventory or account, as required under this chapter, that is accurate and complete.

(b) Committing fraud, waste, or mismanagement.

(c) Abusing or neglecting the conservatee or knowingly permitting others to do

so.

(d) Engaging in self-dealing.

(e) Failing to adequately provide for the personal needs of the conservatee from available estate assets and public benefits.

(g) Failing to act in the best interests of the conservatee.

→ Same list as A.80, for § 54.48(2) - except not (f) or (i)

****NOTE: Section 54.76 (6) does not contain all the elements for cause for removal of a guardian that are specified in s. 54.58 (2). Please review. X

(7) (a) The powers of a conservator may not be terminated without a hearing and may not be terminated unless any of the following occur:

1. The court removes the conservator on the court's own motion or under sub. (4).
2. The court appoints a guardian for the individual whose estate is conserved.
3. The individual whose estate is conserved dies.
4. The conservator or individual whose estate is conserved changes residence to another state.

****NOTE: Instead of drafting s. 54.76 (7) (a) 5. concerning the court's receipt of "notice from an interested person," I allowed anyone to file a petition under s. 54.76 (4). Please review.

5. The court finds cause, as specified in sub. (6), for removal of the conservator.

(b) If anyone objects to termination of the conservatorship and alleges that the individual whose estate is conserved is appropriate for appointment of a guardian, the court may stay the hearing under par. (a) for 14 days to permit any interested person to file a petition for guardianship. If no petition is filed, the court may terminate the conservatorship and may appoint a guardian ad litem for the individual.

****NOTE: I did not add the authority for the guardian ad litem to contact the county Adult Protective Services unit; statutory authorization is not needed for such an action.

(8) If a court terminates a conservatorship or a conservator resigns, is removed, or dies, the conservator or the conservator's personal representative ^{or special administrator} shall promptly render a final account to the court and to the former conservatee, any guardian of the former conservatee, or any deceased conservatee's personal representative or special administrator, as appropriate. If the conservator dies and the conservator and the deceased conservatee's personal representative or special administrator are the same person, the deceased conservatee's personal representative or special

✓ administrator shall give notice of the termination and rendering of the final account to all interested persons of the conservatee's estate.

****NOTE: This provision mirrors s. 54.66 (1). Please review.

ok
8/24

346.06 (1) (L) To any person who has been declared incompetent under s. 54.25 (2) (c) 1. d. to apply for an operator's license.

343.31 (title) Revocation or suspension of licenses after certain convictions or declarations.

343.31 (2x) The department shall suspend a person's operating privilege upon receiving a record of a declaration under s. 54.25 (2) (c) 1. d. that the person is incompetent to apply for an operator's license. The department may reinstate the person's operator's license upon receiving a record of a declaration that the person is no longer incompetent to apply for an operator's license under s. 54.25 (2) (c) 1.d., if the person is otherwise qualified under this chapter to obtain an operator's license.

343.31 (3) (a) Except as otherwise provided in this subsection or sub. (2m) or (2x), all revocations or suspensions under this section shall be for a period of one year.

440.121 Credential denial, nonrenewal and revocation based on incompetency. (1) Notwithstanding any other provision of chs. 440 to 480 relating to issuance of a credential, the department shall deny an application for an initial credential or credential renewal or revoke a credential issued to an individual for whom the department receives a record of a declaration under s. 54.25 (2) (c) 1. d. stating that the individual is incompetent to apply for a credential under chs. 440 to 480.

757.48 (1) (a) Except as provided in s. 879.23 (4), in all matters in which a guardian ad litem is appointed by the court, the guardian ad litem shall be an attorney admitted to practice in this state. In order to be appointed as a guardian

ad litem under s. 767.045, an attorney shall have completed 3 hours of approved continuing legal education relating to the functions and duties of a guardian ad litem under ch. 767. In order to be appointed as a guardian ad litem under s. 54.40 (1), an attorney shall have completed any approved continuing legal education requirements.

complied with SCR 36.

(END)



Faculty Director
Walter J. Dickey

Director
Meredith J. Ross

Clinical Faculty
Betsy J. Abramson
Juliet M. Brodie
Kenneth P. Casey
Pete DeWind
Keith A. Findley
Ben K. Kempinen
Michele LaVigne
Marsha M. Mansfield
Stephen E. Meili
Judith E. Olingy
John A. Pray
Mary M. Prosser
Michael S. Scott
Leslie D. Shear
Kenneth M. Streit

July 2, 2004

TO: Ellen Henningsen, CWAG Elder Law Center
Mitch Hagopian and Dianne Greenley, WCA

FROM: Betsy Abramson *Not*

RE: Guardianship Reform, again.....

CC: Bruce Tammi, Barbara Becker, Jim Jaeger, Barbara Hughes,
Andy Brusky – State Bar Elder Law Section
Deb Sybell, State Bar

Debora
Enjoy!
Bees

Thanks much to all of you for your thorough review of the Elder Law Section's proposal on Guardianship Reform. Bruce Tami, Barbara Becker, Jim Jaeger, Deb Sybell and I went through all of your comments on June 21. Our responses to your comments are enclosed. I am sending you each the other's comments and our responses, too, just to keep everyone in the loop. (I thought the penciled in responses would be a refreshingly low-tech response. Hope that years of practice will make reading my chicken scratchings a little easier.) I hope that we have explained our responses in a way that makes our thinking clear; if not, give a call, of course. I am also enclosing a very draft "policy" statement for the new ch. 54 – a proposed 54.001, similar to Ch. 55's 55.001. I just made this up, of course; the other Elder Law Section representatives are just seeing it with this mailing as well. Also, we do want to convey to Mitch and Dianne, that we think some of our differences in perspective are a reflection of who we represent; our experience with guardianships for older people is obviously a little different than your experience with guardianships for people with disabilities, but we would like to continue to have just one set of statutes for all disability groups.

Note that wherever I wrote "agreed" or "yes," we have changed the draft (being submitted to Debora Kennedy today), consistent with your suggestion. And speaking of Debora, she tells me that, if all goes according to plan, she will get this done in July, before the next budget requests come in, so that it will be done in time to be introduced in January. Sure hope so!

Again, many thanks for your thorough review and comments.

DRAFT

DEBORA: Please clean this up – hope you get our drift!

Not a

54.001 Declaration of Policy. The legislature recognizes that many adult citizens of the state, because of degenerative brain disorders, developmental disabilities, serious and persistent mental illness or other like incapacities, may be unable to meet the essential requirements for their physical health and safety or manage their property or financial affairs. These individuals may be in need of an individual or entity to exercise their rights and responsibly make decisions on their behalf, through the appointment of a guardian. Such an appointment should be made only when lesser restrictive alternatives or other resources are not available and giving deference to advance planning efforts previously made by these citizens. Guardianships should always be limited to place the least possible restriction on personal liberty and the exercise of constitutional rights, consistent with due process and protection from abuse, exploitation and neglect.

Kennedy, Debora

From: Kennedy, Debora
Sent: Wednesday, July 28, 2004 11:04 AM
To: 'Betsy J. Abramson'
Subject: RE: Knock knock

I actually did not get it until July 9 (the postmark is July 6). I will be starting on it as soon as I can finish a current project; since some of the proposal refers to the Leg Council Chapter 55 language, it will be important to have that language finalized before this bill is completed. From the numerous changes to and questions in this draft, I can see that I will have to have at least one conference with you. After the changes are made to this draft as you like, I will then have to incorporate the changes in statutes that cross-reference ch. 880 provisions that are renumbered or repealed by the draft--that will nearly double its size. So there is still quite a ways to go, but, because it basically is in much better shape now, it should be able to be accomplished. Please remember that, since Representative Miller is giving up his position to run for the Senate, you will ultimately need another legislator to introduce the bill for the upcoming session (Rep. Miller, since he's still in office, can request it for the 05-06 session, but of course won't be able to introduce it in the Assembly, and won't be able to introduce it in the Senate unless he wins. Right now we're still drafting for the 03-04 session, but that will change sometime around the first of September, at which point someone will have to request it for the 05-06 session, and it will receive a new LRB number). This is a very long way of saying I think it can be ready, in final form, for January introduction--it may take more than one redraft to do that.

-----Original Message-----

From: Betsy J. Abramson [mailto:bjabramson@wisc.edu]
Sent: Wednesday, July 28, 2004 10:27 AM
To: Kennedy, Debora
Subject: Knock knock

Sigh, that time of the season again - am off to an Elder Law Section meeting this Friday and have to report on the status of Guardianship Reform proposal. You had told me once that if we got it to you by 7/1, you'd be able to get to it, you hoped, before getting deluged with budget stuff again. Because of weird mail systems here, my guess is that you didn't get it until 7/7, so, with no right of any expectations, I'm just politely asking whether you think you will have the latest changes incorporated in time for us to get it introduced in January 2005. Any prayer? Thanks. BA

Kennedy, Debora

From: Betsy J. Abramson [bjabramson@wisc.edu]
Sent: Thursday, July 29, 2004 3:37 PM
To: Kennedy, Debora
Subject: RE: Knock knock

Wow, we are a frustrating group! We'll get on it - sorry. Bets

At 02:41 PM 7/28/2004 -0500, you wrote:

>Things now have changed; I am waiting for replies on the other project on
>which I was working because I can't proceed without them, so I have turned
>to the Guardianship Reform proposal. Something initially that I note is
>that the Elder Law Section seems not to have responded to my questions in
>the Drafter's Note dated January 16, 2004. I would appreciate your
>bringing this to the Elder Law Section's attention, since the questions
>must be answered before a final version can be finished.

>

>-----Original Message-----

>From: Betsy J. Abramson [mailto:bjabramson@wisc.edu]
>Sent: Wednesday, July 28, 2004 10:27 AM
>To: Kennedy, Debora
>Subject: Knock knock

>

>

>Sigh, that time of the season again - am off to an Elder Law Section
>meeting this Friday and have to report on the status of Guardianship Reform
>proposal. You had told me once that if we got it to you by 7/1, you'd be
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>again. Because of weird mail systems here, my guess is that you didn't get
>it until 7/7, so, with no right of any expectations, I'm just politely
>asking whether you think you will have the latest changes incorporated in
>time for us to get it introduced in January 2005. Any prayer? Thanks. BA

Kennedy, Debora

From: Kennedy, Debora
Sent: Thursday, August 26, 2004 2:17 PM
To: Kuhn, Jamie
Subject: RE: Draft sponsor

Thank you.

-----Original Message-----

From: Kuhn, Jamie
Sent: Thursday, August 26, 2004 2:16 PM
To: Kennedy, Debora
Subject: FW: Draft sponsor

Please feel free to move forward with this with Rep. Miller's approval.

Jamie

Jamie S. Kuhn
Office of Rep. Mark Miller
State Capitol
Room 112 North
P.O. Box 8953
Madison, WI 53708-8953
Phone 608/266-5342
Fax 608/282-3648

-----Original Message-----

From: Betsy J. Abramson [mailto:bjabramson@wisc.edu]
Sent: Wednesday, August 25, 2004 5:00 PM
To: Kuhn, Jamie; Miller, Mark
Subject: Fwd: Draft sponsor

Jamie/Mark: Can we count on Mark to be the draft sponsor for the Guardianship Reform bill that you had earlier requested for us? Thanks much! Betsy (Hey, great piece in the Cap Times today. ;) !) Betsy

>Date: Wed, 25 Aug 2004 16:38:13 -0500
>From: "Kennedy, Debora" <Debora.Kennedy@legis.state.wi.us>
>Subject: Draft sponsor
>To: bjabramson@wisc.edu
>Thread-topic: Draft sponsor
>Thread-index: AcSK69M5vDauM99+QPm62gvpmVb+0w==
>X-Spam-Score:
>X-Spam-Report: IsSpam=no, Probability=7%, Hits=__CTE 0, __EVITE_CTYPE 0,
> __CT_TEXT_PLAIN 0, __CT 0, __IMS_MSGID 0, __HAS_MSGID 0, __SANE_MSGID 0,
> __MIME_VERSION 0, __TO_MALFORMED_2 0, __MSGID_BEFORE_RECEIVED 0,
> __C230066_P5 0, __MIME_TEXT_ONLY 0, MSGID_FROM_MTA_HEADER 0.000
>X-Spam-PmxInfo: Server=avs-7, Version=4.6.1.107272,
> Antispam-Core: 4.6.1.106808, Antispam-Data: 2004.8.25.111248,
> SenderIP=165.189.139.250
>X-MS-Has-Attach:
>X-MS-TNEF-Correlator:
>Original-recipient: rfc822;bjabramson@wisc.edu
>
>Has Rep. Miller agreed to sponsor the ch. 880 revisions for this coming
>biennium? Could you please call Jamie Kuhn or another of his aides and
>ask them to request it of me?

>
>Debora A. Kennedy
>Managing Attorney
>Legislative Reference Bureau
>(608) 266-0137
>debora.kennedy@legis.state.wi.us

Kennedy, Debora

From: Betsy J. Abramson [bjabramson@wisc.edu]
Sent: Tuesday, August 24, 2004 5:29 PM
To: Kennedy, Debora
Subject: In case I forget to ask tomorrow.....

...was supposed to ask you for your best ballpark figure of when we'd see the next draft on G Reform - not that you could know until you see all of what's left. Anyway, the State Bar Board of Governors' Exec. Com. is meeting on 10/14 and so if we had it BEFORE then we could provide a copy with a short(er) cover memo describing it. On 11/5, the whole Board of Governors is meeting, and hopefully approving the whole thing with strong support - which will help us get it passed (at least that's the theory...) so we are hoping to stay on track. Possible Oh-Wonder-Woman? B.

Kennedy, Debora

From: Betsy J. Abramson [bjabramson@wisc.edu]
Sent: Wednesday, August 25, 2004 3:22 PM
To: Kennedy, Debora
Subject: RE: In case I forget to ask tomorrow.....

Of course! Am working on the "leftover" pieces - harder than I thought, of course - such miscellany.... don't want to de-organize thing by just plopping in all this junk just anywhere, although I am thinking about possibly a "miscellany" section! Will have it to you by Monday at the latest - promise! BA

At 01:35 PM 8/25/2004 -0500, you wrote:

>If I can, by September 6, get from you the material we agreed that I need
>for the next draft, I will commit to having the next draft drafted,
>edited, typed, and submitted to Representative Miller by October 1--the
>earlier I get all the material, the earlier I can get it to you. The
>tricky question will be whether I can get to you an INTRODUCIBLE draft,
>including an analysis, in time for the 11/5 Board of Governors
>meeting--that may be harder or easier, depending on the extent of changes
>needed after you've reviewed the next draft and how hard I get hit by
>budget requests. I would very much appreciate receiving a copy of your
>cover memo that you will be providing to the Executive Committee. Okay?
>

>-----Original Message-----

>From: Betsy J. Abramson [mailto:bjabramson@wisc.edu]
>Sent: Tuesday, August 24, 2004 5:29 PM
>To: Kennedy, Debora
>Subject: In case I forget to ask tomorrow.....
>
>

>...was supposed to ask you for your best ballpark figure of when we'd see
>the next draft on G Reform - not that you could know until you see all of
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>meeting on 10/14 and so if we had it BEFORE then we could provide a copy
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>Governors is meeting, and hopefully approving the whole thing with strong
>support - which will help us get it passed (at least that's the theory...)
>so we are hoping to stay on track. Possible Oh-Wonder-Woman? B.

Kennedy, Debora

From: Betsy J. Abramson [bjabramson@wisc.edu]
Sent: Friday, September 10, 2004 2:42 PM
To: Kennedy, Debora
Subject: Fwd: Guardianship Reform - Important Dates

Debora: I will work on the talking points FROM WHAT I ALREADY HAVE. But if we just had one clean copy to be able to send Deb Sybell around the 4th, then she'd at least be able to say with a straight face that this thing was in motion and essentially ready for submission.... final boarding stages, etc. Thanks! Bets

Date: Fri, 10 Sep 2004 14:11:44 -0500
 From: Debra Sybell <dsybell@wisbar.org>
 Subject: Guardianship Reform - Important Dates
 To: BETSY J ABRAMSON <bjabramson@wisc.edu>
 Thread-topic: Guardianship Reform - Important Dates
 Thread-index: AcSXaf79dtKvJ4FuRoehNMH3HHvAcQ==
 X-Spam-Score:
 X-Spam-Report: IsSpam=no, Probability=7%, Hits=__C230066_P5 0, __CT 0,
 __CTYPE_HAS_BOUNDARY 0, __CTYPE_MULTIPART 0,
 __CTYPE_MULTIPART_ALT 0,
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 __TAG_EXISTS_HEAD 0, __TAG_EXISTS_HTML 0, __TAG_EXISTS_META 0
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 Antispam-Data: 2004.9.10.1, SenderIP=66.170.4.84
 X-MS-Has-Attach:
 X-MS-TNEF-Correlator:
 Original-recipient: rfc822;bjabramson@wisc.edu

Hi Betsy:

Here at the important dates regarding guardianship reform:

Legislative Council Special Committee on Child Guardianship and Custody - September 22nd
 You have agreed to testify. Contact person: Russ Whitesel 266-0922

State Bar Executive Committee Meeting - October 14th

We will have to submit written materials to the Executive Committee about **10 days before** the meeting. Hopefully the draft will be completed by then and we will need to develop some talking points/highlights. No Elder Law Section Board member will need to attend this meeting. I will be there to be the voice of the Section. The Executive Committee schedules items for the Board of Governors meeting.

State Bar Board of Governors Meeting - November 5 at the State Bar Center

This is the one where we will need speakers to address the BOG regarding the Section's +5 position on Guardianship Reform and be available for questions.

If you have any questions, please feel free to contact me.

Deb Sybell, Government Relations Coordinator

State Bar of Wisconsin
PO Box 7158
Madison, WI 53707-7158
Direct Dial: (608) 250-6128
Fax: (608) 257-4343
E-mail: dsybell@wisbar.org

WISCONSIN LAWYERS
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August 30, 2004

To: Debora Kennedy
FROM: Betsy Abramson
RE: Guardianship Reform – Missing provisions from ch. 880

In your Drafter's Note from January 2004, you asked about certain provisions of ch. 880 that did not appear to have been addressed in our proposal. You asked whether we wanted to retain them, and if so, what, if anything should be done with them, including where they should "land." The following is my response, with input from the other State Bar Elder Law Section members who have been closely involved with this project.

880.01 (intro) – I did not find such a provision in 880.01 (unless you meant the "Cross-reference" reference?)

880.01(9) – ignore; this is now 54.01(20).

880.01(10) - ignore; this is now 54.01(22)

880.07(3) – put this under/with 54.25(2)(c)1.g. on p.38

880.075 – Make this 54.44(1)(b) on page 43. Make an (a) and then put the language that starts out "A petition for guardianship, other than a petition under 54.50(1) or ~~(2)~~(b) under this sub-section, shall be heard within 90 days after it is filed. Then make a "(b)" and put the current 880.075 here.

***880.155 – keep and put on p. 69, before Subch. V?

***880.157 – keep and put on p. 69, before Subch. V?

***880.16(1) – waiting on Children and the Law Section

***880.16(3) – do we need this? Covered in other methods on p. 80 – 54.68(2)? Put on p.81 under Remedies?

***880.16(4) – How does this compare to p. 77? - 54.64(4)

880.191(1) – already covered by 54.60(1)

880.191(2) – keep, and make 54.60(8)

***880.195 – keep? Make a 54.625? or 54.59 – p.69?

***880.252 – Change the language? Ok as is? Make it 54.62(8) on p.74?

***880.253 – Drop the last sentence? Otherwise fine? If keep, make 54.62(9) on p.74?

***880.29 – Keep? Change the language from “foreign guardian”? Where to put?

***880.295 – Have an inquiry into DHFS. If keep, make as 54.13 or 54.35? Anyone have thoughts?

***880.32 – Why is this in guardianship? Dump entirely?

880.33(3) – drop

880.33(4) – drop

880.33(6) – keep – make it 54.75 on p.84

880.33(8) (intro) – yes – combine with (b) language below.

.33(a) – unnecessary – drop

.33(b) – keep and make a 54.175 – and expand to POA-F and Guardian of Estate too?

880.34(2) make this into 54.64(2)(d) or 54.64(2)(bm).

880.34(3) – Under 54.64(2)(a), on page 75, change to: “A ward..... review of incompetency or to have the guardian discharged and a new guardian appointed or to have the guardianship limited and specific reights restored. Such a petition may be filed

....

880.37 – drop.

8/24/04 From Betsy Abramson

① Transfer all of ch. 880 to ch. 54; add
rel. dpts from ch. 851.

Kennedy, Debora

From: Nelson, Robert P.
Sent: Monday, September 13, 2004 2:23 PM
To: Kennedy, Debora
Subject: s. 880.32

Debora,

I talked to John R, attorney for DVA about this section. He says they occasionally get calls about it, so he suggests putting it in ch. 45. There is a legislative council committee looking at rewriting ch. 45, so for now I would suggest renumbering it to s. 45.55.

Thanks,

Robert P. Nelson
Senior Legislative Attorney
608-267-7511

Kennedy, Debora

From: Betsy J. Abramson [bjabramson@wisc.edu]
Sent: Tuesday, August 24, 2004 5:27 PM
To: Kennedy, Debora
Subject: Guardianship Reform - p. 14

Debora:

here is the response of the Bar's Real Property, Probate and Trust section to our query on the bottom of p. 14 of the draft:

I have read the proposed change on page 14. I feel it should be extended to formal probate, and summary proceedings. The cost of administering small guardianships far outweigh their benefits. Filing fees are required, annual accounts need to be prepared and filed, often by relatives who have no training to prepare accounts. They are then required to hire someone to prepare the accounts. Allowing payment to be made to an agent under a durable power of attorney or as proposed in the legislation to put it in a bank account makes good sense. I would also propose changing the "savings account" language to "interest bearing account", check with your bank on savings account rates and you will see the reason.

** Betsy

*DAK ***** NOTE:
Do not understand*

08/25/2004

Kennedy, Debora

From: Betsy J. Abramson [bjabramson@wisc.edu]
Sent: Tuesday, August 24, 2004 5:50 PM
To: Kennedy, Debora
Subject: Fwd: Guardianship Reform questions

Here's the responses. (HOW'S THAT FOR QUICK?!) BA

>2. p.18 of the draft 54.15(7). Debora still needs a better answer to her
>first NOTE. Did we really mean that an example of a non-profit entity
>included a TRUST? Or an unincorporated association? We WOULDN'T ever
>want a TRUST to be a guardian of the PERSON, would we? How about an
>unincorporated association? Please let me know.

JIM JAEGER ANSWER IS:

2. Trust--I'm neutral on that one. Unincorp. Association--I think we
should leave that open if we can. This is a relatively new statute and
it's not clear to me how much it will be used. I don't use them (but
then I'm of the "pioneers get all the arrows" school).

>3. p. 56 - 54.46(2). WCA, CWAG-ELC and Kevin Underwood, have all objected
>to the idea of this "protective arrangement, financial transactions,
>appointment of 'special guardian' - Kevin even since the addition of the
>sub-section that specifically states that this would be limited to actions
>only a guardian of the estate could take. Is there a reason that we need
>this? Seems like it is brewing a lot of conflict and I know from
>experience how capable Kevin is of derailing things. Why couldn't a
>limited, or temporary, guardianship accomplish the same objective here?

JIM JAEGER ANSWER: 3. Protective arrangements. I don't
understand all the fuss. In my
>view, that's less intrusive than a guardianship would be, isn't it. But
>if people have a hangup, I'm not wedded to it.

BA says: Please eliminate this from the draft. (For some reason I
had actually recalled that this was already in the statute, but I couldn't
find it in a quick look right now. Will keep looking tonight when I do my
other homework!) Bets

✓
Kennedy, Debora

From: Betsy J. Abramson [bjabramson@wisc.edu]
Sent: Tuesday, August 24, 2004 6:24 PM
To: Kennedy, Debora
Subject: Guardianship of Jane E.P.

Debora: This is the case I talked about this
p.m. <http://www.wisbar.org/res/capp/2004/03-0634.htm>

As I understand it, the court said that requiring the subject of a guardianship to be physically present or a resident of this state before a petition could be filed was unconstitutional - violating the right to travel. It would seem to me, then, that if you can't require a person to be a resident of this STATE before accepting a petition in a particular county, that you can't require a person to be a resident of a CERTAIN COUNTY before accepting a petition for guardianship or protective placement in that county. So, on page 41, for example, I think our language (as amended and amended again) is fine, albeit perhaps the first set wasn't even needed ("where the petitioner proposes that the the proposed ward be protectively placed") and, of course, I'm wondering why we use the term "protectively placed" in ch. 54 - guardianship only. Hmmm. P.38, again, would seem like, given the case, don't need g. there. ✓

See you in the a.m. BA ✓

Kennedy, Debora

From: Betsy J. Abramson [bjabramson@wisc.edu]
Sent: Friday, August 27, 2004 5:01 PM
To: jjaeger@mailbag.com; bhughes@hill-law-firm.com; tammi@execpc.com; beckerhickey_bjb; dsybell@wisbar.org
Cc: bjabramson@wisc.edu
Subject: Guard Reform - 880 leftovers



G Reform Qs - 880
leftovers - ...

Gang:

I met with Debora Kennedy this week and she had some questions about the sections and sub-sections in 880 that we had not specifically touched. We had assumed that we wanted them "brought over" but as I talked to Debora, we realized that we really needed to go through each one and be sure - and if we wanted to keep it, should it be kept with same language? revised? if so, how? where should it go? So, attached are my best guesses. If you are pressed for time (aren't we all...?!) then I'd only ask you to look at the ones that I have yellowed with blue lettering (should be ***'s there too). The rest I'm pretty confident about. I have bcc'd Debora on this as well so she can get started with the ones I'm sure about. Could I hear from all of you by, say, Wed. of next week?
(9/1) Thanks much, as always! Bets

Kennedy, Debora

From: Kennedy, Debora
Sent: Monday, August 30, 2004 5:25 PM
To: 'Betsy J. Abramson'
Subject: RE: Guard Reform - Children and the Law responses

Thanks very much.

-----Original Message-----

From: Betsy J. Abramson [mailto:bjabramson@wisc.edu]
Sent: Monday, August 30, 2004 5:10 PM
To: Kennedy, Debora
Cc: troetter@hill-law-firm.com; jjaeger@mailbag.com;
bhughes@hill-law-firm.com; beckerhickey_bjb; tammi@execpc.com;
dsybell@wisbar.org
Subject: Guard Reform - Children and the Law responses

Debora:

Theresa Roetter, chair of the Children and the Law Section, was kind enough to go through our questions and get back to me about the questions on the draft that we had highlighted for their attention. The responses are as follows:

✓ p.14 - 54.12(1)(b) - change the words "natural guardian" to "parent" - this way we all know who we're talking about - the person who has not had his/her rights terminated and NOT a person whose paternity has NOT been established.

✓ p.17 - 54.15(4)(b) - change to "A minor 14 years and over may in writing....."
54.15(4)(c) - change to "If neither parent of a minor 14 years and over is suitable...."

NOTE
✓ p.39 - 54.25(2)(d)2.p. - change the word "charge" to "custody"

✓ p. 69 - answer to question in your NOTE about whether you should move the ch. 48 stuff into ch. 54: an emphatic NO. They "agree it's weird, but want to keep them." Perhaps this will be addressed by the Leg. Council Child Guardianship committee?

✓ p. 77 - 54.64(3)(d) and (4)(d) - we asked Children and the Law whether those were ok. They say YES.

That's it from Children and the Law. I hope that Theresa, whom I've cc'd on this, will correct me if I got anything wrong. Thanks for your help Theresa and your patience Debora.
Betsy A.

In bill ✓

Kennedy, Debora

From: Betsy J. Abramson [bjabramson@wisc.edu]
Sent: Tuesday, August 31, 2004 2:51 PM
To: Kennedy, Debora
Subject: Fwd: Re: Sec. 880.295, Wis. Stats.

Re: Guardianship Reform - drop 880.295 - Bets

>Date: Tue, 31 Aug 2004 14:48:12 -0500
>From: Linda Dawson <dawsol@dhfs.state.wi.us>
>Subject: Re: Sec. 880.295, Wis. Stats.
>To: bjabramson@wisc.edu
>X-Mailer: Novell GroupWise Internet Agent 6.0.4
>X-Spam-Score:
>X-Spam-Report: IsSpam=no, Probability=7%, Hits=__CTE 0, __EVITE_CTYPE 0,
> __CT_TEXT_PLAIN 0, __CT 0, __HAS_MSGID 0, __SANE_MSGID 0, __MIME_VERSION 0,
> __TO_MALFORMED_2 0, __HAS_X_MAILER 0, __CD 0, __MSGID_BEFORE_RECEIVED 0,
> __C230066_P5 0, QUOTED_EMAIL_TEXT 0, __MIME_TEXT_ONLY 0,
> MSGID_FROM_MTA_HEADER 0.000
>X-Spam-PmxInfo: Server=avs-4, Version=4.6.1.107272,
> Antispam-Core: 4.6.1.106808, Antispam-Data: 2004.8.30.111598,
> SenderIP=159.158.58.164
>Original-recipient: rfc822;bjabramson@wisc.edu
>
>I guess so.
>LD
>
> >>> BETSY J ABRAMSON <bjabramson@wisc.edu> 8/31/04 2:38:41 PM >>>
>LD: From this I gather that we can drop it????? Bets
>
>
>Betsy J. Abramson
>Clinical Assistant Professor
>University of Wisconsin Law School
>Economic Justice Institute - Elder Law Clinic
>975 Bascom Mall
>Madison, WI 53706
>(608) 265-2980
>(608) 263-3380 - FAX
>bjabramson@wisc.edu
>
>----- Original Message -----
>From: Linda Dawson <dawsol@dhfs.state.wi.us>
>Date: Tuesday, August 31, 2004 2:05 pm
>Subject: Re: Sec. 880.295, Wis. Stats.
>
> > Here's what Kevin Bailey said (Neil deferred to Kevin and Paul had
> > nothing more to add):
> > "Personally, I never used it while I was a Corp Counsel. In a
> > situation like this, I would have followed the general
> > guardianship statutes (s.880.33) and not relied on this. Counties
> > generally have a list of volunteer guardians who have agreed to
> > step in where there is no family/friend to act, and I know I would
> > have been very reluctant to advise that the County should ever
> > become the actual guardian. I guess I don't see what benefit this
> > really provides, although I have no idea whether or not it is used
> > by some other Counties.
> >
> > As far as the Department petitioning, shouldn't we be looking to
> > the Counties to be doing this for their residents in the first
> > place? The statute allows 'any relative, public official or other
> > person' to petition for guardianship (s. 880.07), so I believe the
> > Department does have the authority to petition in the appropriate

> > cases, especially if the person is in a State facility.
> >
> > If it's being used, it should stay. I'm just not sure how
> > necessary it is."
> >
> > LD
> >
> >
> > >>> BETSY J ABRAMSON <bjabramson@wisc.edu> 8/28/04 11:05:23 AM >>>
> > LD: In finishing up the last pieces of guardianship reform, I have
> > been asked by Debora Kennedy if we still want certain sections of
> > ch. 880 that our committee did not address. Could you let us know
> > what your gang thinks about sec. 880.295? Do you still use it?
> > Is it still needed? Thanks. Betsy
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> > Betsy J. Abramson
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> > bjabramson@wisc.edu
> >
> >
> >

Kennedy, Debora

From: Betsy J. Abramson [bjabramson@wisc.edu]
Sent: Friday, September 03, 2004 2:23 PM
To: Kennedy, Debora
Subject: Fwd: RE: Guard Reform - 880 leftovers



RESPONSE G

Reform Qs - 880 lef...

Debora: Since I'm already four days later than I thought I'd be and only heard from one person, I am going to assume he well reflects all private practitioners and send you his comments. Let me know if you need anything more. Otherwise, this completes all your questions.... I hope. Have a good long weekend. Betsy

>Date: Fri, 03 Sep 2004 14:20:41 -0500
>From: "Bruce A. Tammi" <tammi@execpc.com>
>Subject: RE: Guard Reform - 880 leftovers
>To: "'Betsy J. Abramson'" <bjabramson@wisc.edu>, jjaeger@mailbag.com,
> bhughes@hill-law-firm.com,
> 'beckerhickey_bjb' <beckerhickey_bjb@sbcglobal.net>, dsybell@wisbar.org
>X-Mailer: Microsoft Outlook, Build 10.0.2627
>Importance: Normal
>X-Spam-Score:
>X-Spam-Report: IsSpam=no, Probability=7%, Hits=__ANY_OUTLOOK_MUA 0, __CT 0,
> __CTYPE_HAS_BOUNDARY 0, __CTYPE_MULTIPART 0, __HAS_MSGID 0,
> __HAS_MSMAIL_PRI 0, __HAS_X_MAILER 0, __HAS_X_PRIORITY 0, __MIME_VERSION 0,
> __NEXTPART_ALL 0, __NEXTPART_NORMAL 0, __SANE_MSGID 0
>X-Spam-PmxInfo: Server=avs-7, Version=4.7.0.111621, Antispam-Engine: 2.0.0.0,
> Antispam-Data: 2004.9.3.0, SenderIP=207.89.252.212
>Original-recipient: rfc822;bjabramson@wisc.edu
>
>BETSY;
>
>I apologize for my late response. My comments are contained in red on
>the attached copy of the memo. I have no comments on the children and
>law additions/changes.
>
>Bruce

August 30, 2004

To: Debora Kennedy
FROM: Betsy Abramson
RE: Guardianship Reform – Missing provisions from ch. 880

In your Drafter's Note from January 2004, you asked about certain provisions of ch. 880 that did not appear to have been addressed in our proposal. You asked whether we wanted to retain them, and if so, what, if anything should be done with them, including where they should "land." The following is my response, with input from the other State Bar Elder Law Section members who have been closely involved with this project.

RP ✓ 880.01 (intro) – I did not find such a provision in 880.01 (unless you meant the "Cross-reference" reference?) AGREE

RA Conform to draft ✓ 880.01(9) – ignore; this is now 54.01(20). AGREE

RA Conform to draft ✓ 880.01(10) – ignore; this is now 54.01(22) AGREE

RP, but combined ✓ 880.07(3) – put this under/with 54.25(2)(c) l.g. on p. ³⁵38 AGREE

INSERT 54
RA; 54.44
(1)(b) ✓ 880.075 – Make this 54.44(1)(b) on page ⁵⁴43. Make an (a) and then put the language that starts out "A petition for guardianship, other than a petition under 54.50(1) or ~~(2)~~(b) under this sub-section, shall be heard within 90 days after it is filed. AGREE
Then make a "(b)" and put the current 880.075 here.

INSERT 6AB
RA; 54.56 ✓ ***880.155 – keep and put on p. 69, before Subch. V? AGREE

INSERT 6AB
RA; 54.57 ✓ ***880.157 – keep and put on p. 69, before Subch. V? AGREE

DAK see where goes
RP ✓ ***880.16(1) – waiting on Children and the Law Section
880.16(2)

RP ✓ ***880.16(3) – do we need this? Covered in other methods on p. 80 – 54.68(2)? Put on p. 81 under Remedies? NOT NEEDED

RP ✓ ***880.16(4) – How does this compare to p. 77? - 54.64(4)

DAK do
INS 81 ✓ I would delete this provision but add the following to 54.68(3):
....any other persons as determined by the court. *The court may authorize petitioner use of any of the methods of discovery contained in Chapter 804 Wisconsin Statutes in support of the Petition to review conduct of the guardian.*

✓ 880.191(1) – already covered by 54.60(1) AGREE

RA; 54.60(8) ✓ 880.191(2) – keep, and make 54.60(8) AGREE

RA; 54.625 ✓ ***880.195 – keep? Make a 54.625? or 54.59 – p.69? KEEP AND PUT AT EITHER LOCATION

RA; 54.62(8) ✓ ***880.252 – Change the language? Ok as is? Make it 54.62(8) on p.74? KEEP AND CHANGE AS FOLLOWS:
880.252 Accounts; failure of guardian to file.

If a guardian fails to file the guardian's account as required by law or ordered by the court, the court may, upon its own motion or upon the petition of any party interested, **order** the guardian to show cause before the court why the guardian should not immediately make and file the guardian's reports or accounts. ***A copy of said order shall be served upon the guardian as directed by the court at least 20 days prior to the date the court has ordered the guardian to appear in court.*** If a guardian fails, neglects or refuses to make and file any report or account after having been cited by the court so to do, or if the guardian fails to appear in court as directed by a citation issued under direction and by authority of the court, the court may, upon its own motion or upon the petition of any interested party, issue a warrant directed to the sheriff ordering that the guardian be brought before the court to show cause why the guardian should not be punished for contempt. If the court finds that the failure, refusal or neglect is willful or inexcusable, the guardian may be fined not to exceed \$250.00 or imprisoned not to exceed 10 days or both.

(I eliminated the sheriff serving the order because current practice is not to do so. I put in a service requirement leaving it up to the Judge to specify how service will be made and a 20 day minimum notice to the guardian. I increased the forfeiture because I do not believe \$50 is much of a disincentive.)

RA; 54.62(9) ✓ ***880.253 – Drop the last sentence? Otherwise fine? If keep, make 54.62(9) on p.74? AGREE

RA; 54.64(5)(6) ✓ ***880.29 – Keep? Change the language from “foreign guardian”? Where to put? KEEP AND PUT AT 54.64(5) –changing the language would be fine but I have no suggestions

RP ✓ ***880.295 – Have an inquiry into DHFS. If keep, make as 54.13 or 54.35? Anyone have thoughts? PROBABLY NOT NECESSARY BECAUSE 54.34(1) ALLOWS “any person” TO PETITION

RP ✓ NO RN; 45.55 ***880.32 – Why is this in guardianship? Dump entirely? I believe it was felt necessary because I believe it is possible for minors to serve in the military service. As a practical matter I doubt the provision is ever used.

RP ✓ 880.33(3) – drop AGREE

RP ✓ 880.33(4) – drop AGREE

RA; 54.75 ✓ 880.33(6) – keep – make it 54.75 on p.84 AGREE

880.33(8) (intro) – yes – combine with (b) language below .AGREE

.33(a) – unnecessary – drop AGREE

.33(b) – keep and make a 54.175 – and expand to POA-F and Guardian of Estate too? AGREE TO BOTH SUGESTIONS

880.34(2) make this into 54.64(2)(d) or 54.64(2)(bm). AGREE

880.34(3) – Under 54.64(2)(a), on page 75, change to: “A ward..... review of incompetency or to have the guardian discharged and a new guardian appointed or to have the guardianship limited and specific reights restored. Such a petition may be filed AGREE....

880.37 – drop. AGREE

Kennedy, Debora

From: Betsy J. Abramson [bjabramson@wisc.edu]
Sent: Tuesday, August 31, 2004 2:51 PM
To: Kennedy, Debora
Subject: Fwd: Re: Sec. 880.295, Wis. Stats.

Re: Guardianship Reform - drop 880.295 - Bets

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>From: Linda Dawson <dawsol@dhfs.state.wi.us>
>Subject: Re: Sec. 880.295, Wis. Stats.
>To: bjabramson@wisc.edu
>X-Mailer: Novell GroupWise Internet Agent 6.0.4
>X-Spam-Score:
>X-Spam-Report: IsSpam=no, Probability=7%, Hits=__CTE 0, __EVITE_CTYPE 0,
> __CT_TEXT_PLAIN 0, __CT 0, __HAS_MSGID 0, __SANE_MSGID 0, __MIME_VERSION 0,
> __TO_MALFORMED_2 0, __HAS_X_MAILER 0, __CD 0, __MSGID_BEFORE_RECEIVED 0,
> __C230066_P5 0, QUOTED_EMAIL_TEXT 0, __MIME_TEXT_ONLY 0,
> MSGID_FROM_MTA_HEADER 0.000
>X-Spam-PmxInfo: Server=avs-4, Version=4.6.1.107272,
> Antispam-Core: 4.6.1.106808, Antispam-Data: 2004.8.30.111598,
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>Betsy J. Abramson
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>975 Bascom Mall
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>(608) 265-2980
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>----- Original Message -----

>From: Linda Dawson <dawsol@dhfs.state.wi.us>
>Date: Tuesday, August 31, 2004 2:05 pm
>Subject: Re: Sec. 880.295, Wis. Stats.

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> > Here's what Kevin Bailey said (Neil deferred to Kevin and Paul had
> > nothing more to add):
> > "Personally, I never used it while I was a Corp Counsel. In a
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> > generally have a list of volunteer guardians who have agreed to
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> > LD: In finishing up the last pieces of guardianship reform, I have
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> > bjabramson@wisc.edu
> >
> >
> >

To deal with ch. 880 subchapters +
ch 851 definitions

In ch. 54 ~~880~~ CR

CR 54.01 () "Court" - from 851.04 * N

CR () "Decedent" - 851.05 " "

() "Heir" - 851.09 " "

() "Mortgage" - 851.15 " "

Write * Number def of "interested person"; compare w/ s. 851.21

() "Personal representative" 851.23 * N

() "Property" - 851.27 " "

() "Sale" - 851.29 " "

() "Surviving spouse" - 851.30 " "

() "Will" 851.31 " "

CR

~~CR 880~~ Subch. VII Uniform Acts

CR ^{54.85} ~~54.80~~ Definitions: notwithstanding s. 54.08, in this

subchapter:

(1) "Administration" - from 851.01

(2) "Beneficiary" - from 851.02

(3) "Distributee" - from 851.07

(4) "Person interested" - from 851.21

✓ AM 880.195 → 54.625 distributee, as defined in s. 54.85(3)

✓ ~~AM 880.195 → 54.625(1)(b) issue, as defined in s. 851.13~~

✓ AM 880.32 → 45.55 mortgage, as defined in s. 851.15

DAK to do:

✓ ① Ask B. Abramson about subch. in 880

Subch. IV - incorporate definitions?

✓ ② Ask BA re definitions in ch. 851

② 851.01 "Administration" -

* Conflicts w/ psychotropic meds

880.60(2)(a)

(5)(b)

(21)

880.853(3)

880.84(6)

880.855(3)

880.865(2)(b)

(3)

880.88(1)(a)

③ 851.03 "Beneficiary"

Subchs. II, III, IV only

* ④ 851.04 "Court" - throughout

* ⑤ 851.05 "Decedent" - throughout

⑥ 851.07 "Distributee"

* 880.195

880.89(3)

880.895(1)(a)

(b)

* ⑦ 851.09 "Heir" - throughout

X * ⑧ 851.13 "Issue" - throughout (conflicts w/ other meaning)

* ⑨ 851.15 "Mortgage"

880.19(1)

(5)(b)

880.32

851.21

* * (i) "Person interested" - note def of "interested person" 880.01(6)

* 880.16(4)

54.01(15)

* 880.19(5)(b)

* 880.192

880.855(4)

880.87(4)

(6)

880.88(2)

* (j) 851.23 "Personal representative" - throughout

* (k) 851.27 "Property" - throughout

* (L) 851.29 "Sale"

880.19(1)

(4)(a)

(b)

(5)

(6)

880.215

880.60(15)(b)

* (m) 851.30 "Surviving spouse"

880.155(1)

* (n) 851.31 "Will" - throughout

✓ 1. Add rel. clause from 4212/P3 ~~22~~

✓ 3. CR; 55.01 (1v) "degenerative brain disorder" (p. 31) ✓

✓ 4. CR; 55.01 (64) - psychotropic medication - from 880.01 (8m)

✓ 6. RP 880.07 (1m) ~~2~~ ~~8~~

✓ S. CR. ^{Same as} 880.38 ft); in ⁴²¹² language is in ⁵⁴²⁰ p. 91

x 10. AM 880.33(1) - remanded 54.36 ~~and back of~~

✓ 12. Check 54.25(2)(d) z.a.

NOTE: I did not create 55.10, 55.11,

Nonstat transitional
lang

55.15,
55.16, or 55.17!

#3 protest created under 880.38(4)(a)

For developmental disabilities, refer to def. in ~~§~~ 51.01(5)(a) - AM that def. ✓

✓ AM 609.65(1)(intro.) CR 55.12(9)

changed 55.14(2) (intr.)

Nonstat premises

CR 50.09 (3)

✓ CR 55.10(4)(a)

✓ Standby or successor conservator

"Standby"

54.01(21)

~~54.10(4)(2)~~

~~54.11(3)~~

880.36(1) → 54.52(1) ✓

(2) → 54.52(2) ✓

"Successor"

Look at 54.76(4)

880.09(6) → 54.15(6)

✗ 880.15(3) → 54.50(1)(d)

880.27 → 54.66(1)

54.54

To add:

✓ AM 54.76(2)
x N: Note addit of
ref to a standby
conservator

INS 85

54.76 CR (3m) A person may at any time bring a petition for the appt. of a standby conservator for an individual for whom a conservator has been appointed under sub. (2).

x N This provision mirrors s. 54.52(1).

x N Do you want further provisions that would correspond to s. 54.15(6),

CR (3n)

Definitions

Same as 54.52(2)

CR: 54.76(9) - same as 54.54(1) + (2)

"successor conservator" means an indiv. appointed under s. 54.76(9)

() "Standby successor conservator" means an indiv. design by the court under s. 54.76(2) whose appt as conservator becomes eff immediately upon the death, resignation, or court's removal of the initially-appointed conservator, or if the initially-appointed conservator is temp or perm unable, unavailable, or unwilling to fulfill his or her duties.

0039/P3

DAK to do

Move Subch. IV of ch. 880 to ch. 54

✓ Check re HIPPA p. 33

✓ Work on p. 25

✓ Go back to p. 38 + also venue stuff

I don't know what to do
✓ look at personal juris. stuff p. 40

"✓ look at p. 41 comments

"✓ look at p. 42 comments

✓ Go back to p. 45 - ~~Exception~~ 3 AM 51.30(4)(b)11?
Another exception to 146.82 + 51.30?
Am 804.10 (1/2)?
HIPPA?

DN ✓ Check p. 82 - is it in leg Council stuff? If not,
remember somewhere in ch. 55.

✓ Check to see if term "successor guardian" (54.01(26)) is
used

DAK to do:

✓ p. 16 - See ***NOTE - figure out how to reconcile
According to BA, trust interests prevails

✓ p. 36 - leg Council venue stuff

✓ p. 41 - ?? INSERT?

✓ p. 42

✓ p. 45

✓ p. 57 + BA answer

✓ p. 58

✓ p. 73 - See Pam Kahler

✓ p. 74 - figure out what to do re income + assets + def.
search for term
54.01(3)
54.20(3)(a) ✓

✓ p. 82

✓ 84

✓ 89

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0039/P2dn
DAK:cjs:ch

January 16, 2004

1. Numerous questions remain about how you wish to deal with provisions in ch. 880 that have not been addressed by your instructions. Do you intend to affect subchs. II to V (note especially subch. IV, which deals with minors and spendthrifts). Please also review the following provisions in subch. I of ch. 880, stats., that have not been affected by this bill: ss. 880.01 (intro.), (9), and (10), 880.07 (3), 880.075, 880.155, 880.157, 880.16, 880.191 (2), 880.195, 880.252, 880.253, 880.29, 880.295, 880.32, 880.33 (3), (4), (6), and (8) (intro.) and (a), and (9), 880.34 (2) and (3), and 880.37. Many of these provisions may be duplicated by language created in the bill, but some are not.

2. As part of the next version of this bill, I will add "under s. 54.10" to phrases referring to individuals who are determined to be incompetent.

3. This draft repeals provisions in ch. 880, stats., concerning psychotropic medication. It does not create replacement provisions in ch. 55, as does the Legislative Council draft WLC: 0220/P1. If the Legislative Council bill that results from WLC: 0220/P1 fails to pass, and this bill passes, there will be no procedure for administration of psychotropic medication.

4. This draft does not address numerous changes that must be made to statutes outside of ch. 880, stats., to reflect the changed numbering effected by this draft. An example is s. 19.32 (1m), stats., which refers to statutes and terms that are changed by this draft. These cross-reference changes will be included in the draft in a later version.

5. This draft includes many new **** Notes, some of which pose specific questions, and some **** Notes from the previous version which have not yet been answered.

6. An important issue that should be decided is the proposed effective date for this bill; do you intend for it to take effect on passage? (Actually, "on passage" means the day after publication by the secretary of state after the governor has signed it.)

7. Another issue is initial applicability, i.e., when the changes in law effected by the bill first apply to procedures, etc. For instance, I presume that you would not want the bill to initially apply to petitions that are in progress, because there may be due process problems that result. A common treatment is to have the bill's provisions first apply to, for instance, petitions that are filed on the bill's effective date.

8. A third issue has to do with the intersection of this bill and the Legislative Council bills modifying ch. 55, stats. (See item 2. above). One way to try to make these separate

BA
will
review

Bring to
ch. 54

Put into
ch. 55 in
this bill
the psycho.
meds from
WLC 0220/P1

ok

6 mo.
after
passage

all

pieces of legislation “work together” is to have them have identical, delayed effective dates (e.g., January 1, 2005), so that there is not a “gap” created in the law between the times they each pass.

9. I would like to express my deep appreciation to Betsy Abramson for the help she has provided me in sorting through the responses to LRB-0039/P1.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0039/P3dn
DAK:cjs:ch&jf

*Guardianship of Jane
follows Bethesda Lutheran. guardian may assert
that a co is a residence of a proposed ward*

1. Section 54.25 (2) (d) 2. g. in this bill is one of numerous powers given to a guardian, if authorized by a court under certain criteria; as qualified, the provision authorizes the guardian to determine the individual's county or state of residence. Your instructions for s. 54.25 (2) (d) 2. g. for the redraft are "Make sure is in harmony with Leg Council Committee's ultimately decided provision on venue." WLC 0220/2, approved by the Legislative Council's Special Committee on Recodification of Chapter 55, has no provision like this; WLC 0220/2 also does not affect s. 880.05, stats. (which, in this bill, is renumbered s. 54.30 (2) and amended). However, WLC 0220/2 amends s. 880.06 (1), stats., and repeals and recreates s. 880.06 (2), stats. Under WLC 0220/2, these statutes would now read as follows:

"880.06 (1) ORIGINAL PROCEEDING. The court in which a petition is first filed shall determine venue. The court shall direct that proper notice be given to any potentially responsible or affected county. After all potentially responsible or affected counties and parties have been given an opportunity to be heard, if it is determined that venue lies in another county, the court shall order the entire record certified to the proper court. A court in which a subsequent petition is filed shall, upon being satisfied of an earlier filing in another court, summarily dismiss the petition. If any potentially responsible or affected county or party objects to the court's finding that the ward is a resident of another county, the court shall refer the issue to the department for determination under s. 51.40 (2) (g). The court shall then suspend ruling on the motion for change of venue until the determination under s. 51.40 (2) (g) is final. Proper notice is given to a potentially responsible or affected county if written notice of the proceeding is sent by certified mail to the county's clerk and corporation counsel.

880.06 (2) CHANGE OF RESIDENCE OR WARD BY GUARDIAN. A guardian for good cause shown may change a ward's county of residence by filing with the court a written statement as specified in s. 51.40 (2) (f)."

Please note that s. 880.06 (2), as repealed and recreated, now no longer addresses the issue of a guardian who moves to another county; I do not at present know if that is intentional. Also, please note that the current wording of s. 51.40 (2) (f), stats., applies only to a guardian who is the parent or sibling of a ward and to a ward who is in a nursing home or state facility; I do not at present know if this narrow application is intentional.

*Call Laura Rose +
find out change; incorporate
in this draft.*

*Note: This is changed to
include any rel. - see leg council*

*Doesn't
matter
DD + MI*

Please compare this language with s. 54.30 (2) (renumbered and amended from 880.05, stats) and (3) (a) (renumbered and amended from s. 880.06 (1), stats.) and (b) (renumbered and amended from s. 880.06 (2), stats.) in this draft. Please indicate *precisely* what changes, if any, you want in this draft to these provisions.

With respect to your instructions concerning s. 54.25 (2) (d) 2. g., it looks as if this provision directly conflicts with both the provisions in this draft and WLC 0220/2. Do you want me to eliminate it or make some other change to it?

2. This bill rennumbers s. 880.331 (5) (a) to (g), stats., as s. 54.70 (1) to (6) and (8) and creates s. 54.70 (7) and (9). These provisions have to do with the duties of a guardian ad litem with respect to reviews of protective placements and protective services orders. Your instructions concerning s. 54.70 are, "This shouldn't be in ch. 54--is only relevant for ch. 55." The bill approved by the Legislative Council's Special Committee on Recodification of Ch. 55, WLC 0220/2, creates provisions in s. 55.18 (2) (a) to (g) and 55.19 (2) (a) to (g) that essentially duplicate s. 880.331 (5) (a) to (g). These provisions, however, do not include the requirement, created in this bill under s. 54.70 (9), that the guardian ad litem attend a hearing for review, and they address only reviews of protective placements and orders for involuntary administration of psychotropic medication, not also reviews of all protective services orders. I am uncertain what to do. I can repeal s. 880.331 (5), stats., in this bill, but if the Legislative Council bill that results from WLC 0220/2 does not pass, and this bill passes, there will be no requirements for guardians ad litem concerning reviews. Another option would be for me to renumber s. 880.331 (5) (a) to (g), stats., in this bill, as s. 55.195 (1) to (6) and (8) and create s. 55.195 (7) and (9). If I do so, and both bills pass, this provision will, of course, be duplicative of ss. 55.18 (2) and 55.19 (2). Please advise. If you choose the second option, should I make the language conform to that in WLC 0220/2?

3. I have not drafted s. 54.001, the declaration of policy, as proposed. Because of numerous problems created by court interpretations of these declarations, it has been the LRB's policy for a number of years not to draft them except for recodification bills or if there is a reasonable probability that a provision of a bill may be declared unconstitutional and such a declaration may help sustain the provision.

4. Please look at the definitions in ~~ch. 851~~, which currently apply to ch. 880, stats. Are there any ~~that should be~~ ^{duplicative for} ~~or modified~~ ~~and added~~ changed and duplicated for ch. 544?

~~5. I have retitled ch. 880, stats.~~

5. I have retitled ch. 880, stats., Uniform Acts FOR RELATED TO GUARDIANS AND CUSTODIANS. Is this ~~information~~ ^{Does this} ~~your~~ ^{your} intent?

Eliminate
see above

In this
bill
are!
ch. 55
to include
legislative
staff,
plus
① ②

yes, plus ① + ②